

From the Madison

REMARKS

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OF

MR. YULEE, OF FLORIDA,

IN THE SENATE OF THE UNITED STATES,

FEBRUARY 14, 15, & 17, 1848,

On the Rights of the People of the United States in Acquired Territory.

Mr. DICKINSON, of New York, having submitted, on the 14th December, 1847, the following resolutions :

Resolved, That true policy requires the Government of the United States to strengthen its political and commercial relations upon this continent by the annexation of such contiguous territory as may conduce to that end, and can be justly obtained ; and that neither in such acquisition, nor in the territorial organization thereof, can any condition be constitutionally imposed or institutions be provided for or established inconsistent with the right of the people thereof to form a free sovereign State, with the power and privileges of the original members of the Confederacy.

Resolved, That in organizing a territorial government for territory belonging to the United States, the principles of self-government upon which our federative system rests will be best promoted, the true spirit and meaning of the Constitution be observed, and the Confederacy strengthened, by leaving all questions concerning the domestic policy therein to the Legislatures chosen by the people thereof.

Mr. YULEE, on the 12th January, submitted, as a substitute for these resolutions, the following :

Resolved, That the territory belonging to or which may be acquired by the United States is the common property of the Union, and sovereignty over the same vests in the people of the several States comprising the Union.

Resolved, further, That the Federal Government has no delegated authority, nor the territorial community any inherent right, to exercise any legislative power within the said territories, by which the equal right of all the citizens of the United States to acquire and enjoy any part of the common property may be impaired or embarrassed.

Mr. YULEE addressed the Senate in explanation and support of his resolutions, as follows :

It has seemed to me due to all the interests involved, that there be a clear understanding of the position of all parties in this country upon the question to which these resolutions relate. So far as the Senator from New York, and those who agree with him, design to repudiate the principles of the Wilmot Proviso, and have aided in suppressing its prevalence in the North, they are entitled to our profound thanks ; and I join in commending the spirit with which they have sought to advance towards a satisfactory adjustment of differences. But it is impossible for me to close my eyes to the fact, that although various approaches have been made, since the last session, in the direction of the Constitution, none of these attempts have reached a point satisfactory to the public mind, and we are, to all practical intents, very much where we stood at the last session.

What is it in the principles of the Wilmot Proviso that excites so justly the alarm and indignation of the southern States of the Union ? That Proviso con-

templates the exclusion of the people of a portion of the States of the Union from the use of acquisitions obtained through the common wealth and strength of the whole. It insults us by resting this discrimination upon a ground injurious to the moral pride and dignity of the South. It strikes at the security of property in the southern States, by aiming to surround them with a cordon of States having antagonist institutions; and threatens the security of their rights, by disturbing the political equilibrium of the two great sections of the Union. On these accounts, the Wilmot Proviso is justly regarded, by a large portion of the people of the Union, as an odious attempt to insult, to betray, and to injure them. It is feared as an attack upon the compromises of the Constitution, and execrated as a disturber of the harmonies of the Union. In its inception, and its application, and in all its aspects, it is distasteful to all who, viewing it as I do, reverence the Union, respect the rights of the States, or set any value upon the dignity of citizenship. It is needless for me to say, that as a liege citizen of a southern State, I can lend no aid, directly or indirectly, to results so injurious as those involved in the Wilmot Proviso; nor combine in political effort with any party which in the remotest degree suffers its taint to rest upon it.

Since the last session of Congress, several propositions for a settlement of the question have been advanced from distinguished quarters. For one, I heartily thank them all for the noble spirit of independence and justice which they have exhibited a disposition to practise. But their propositions seem to involve, in the contemplation of the advocates of their opinions, results practically the same as those of the Wilmot Proviso. It becomes important, therefore, to explore still further the field of the Constitution for a secure foundation to our rights.

The two leading propositions to which I will refer, because they seem to comprehend in their scope all the rest, are—

First. The Missouri compromise line as the rule of settlement; and,

Secondly. A transfer of the question to the inhabitants of the territory.

Neither of these satisfy me. Legislative compromise is the most unsafe and shifting ground upon which the rights of a people can rest. No other evidence of this is necessary than is furnished by the fate of the tariff compromise, and still more recently by the votes of the late Congress upon this very Missouri compromise. The Constitution furnishes the only enduring and steady basis of right, and the legislation of Congress is incompetent to modify or compromise the terms of this fundamental compact; for otherwise the creature may control the creator.

Nor is the proposed transfer of the question to the inhabitants of the territory less objectionable. It is not only in conflict with the duties and authority of Congress, but it resigns to the first few persons who chance to be upon acquired territory the whole disposition of the destiny of our territorial possessions.

The insufficiency of either of these plans to avert the evil effects of the Wilmot principle, seems to be conceded by their respective advocates, who, while they patriotically denounce the agitation of the Wilmot Proviso, adopt, doubtless from honest conviction, grounds which they acknowledge must produce the same practical results. They hold, that because the laws of Mexico prohibit slavery, it could never exist in territory acquired from her, unless expressly established or authorized by Congress; and one branch of them assign to the inhabitants of the territory an original right of legislation in respect to their local government, including the subject of slavery—thus denying to Congress the power to legislate for the protection of our citizens in the territories of the United States.

Of course, if the repeal of the restriction depended upon Congress, it would be in the power of the North to control the question, as they have a settled majority in the House of Representatives: or, if the question was left to the inhabitants of the territory, those who were transferred with it, would fix its destiny as a non-slaveholding territory, by continuing the restriction and excluding the settlement of slaveholders.

[Mr. YULEE referred to sundry evidences to show that such were the views and acknowledged anticipations entertained upon the subject, by many who were resisting the agitation of the Wilmot Proviso in the northern States.]

Mr. Y. proceeded. Thus it will be seen that both these propositions rest upon grounds which render inevitable the same practical result as the Wilmot Proviso, namely, the encirclement of the South by a belt of non-slaveholding States, with all its fatal consequences upon our prosperity and existence.

The only difference I can see, is in the temper which is exhibited. While the advocates of Wilmotism march boldly up, with hostile spirit, to the violent immolation of the States of the South, the advocates of the other propositions, acting, as I believe, under an erroneous conception of the Constitution, invite us to aid in our own immolation; thus converting the execution into a *felo de se*. However we may estimate their respective motives, the fatal effects would be the same, and therefore with equal decision to be repelled.

Believing that it is the right of a citizen of the southern States to go upon any territory belonging to the United States which is opened to occupation, and to reside upon it securely, with his slaves and other property, under the guarantees of the Constitution; and believing, further, that Congress is bound to throw over him the shield of its protection in the enjoyment of this right, against disturbance from any quarter, I deem it due to the State I represent to dispute the opinions which conflict with my belief. And I engage in the discussion the more readily from the conviction that, as the advocates of these doctrines manifest a purpose to plant themselves upon whatever ground a true construction of the Constitution may require, we may, by a thorough discussion at an early day, discover where is the line of truth, and join together in its maintenance.

The Senator from New York [Mr. DICKINSON] being as yet the only exponent upon this floor of the doctrine of a right in the inhabitants of our territories to control the question of slavery, I shall proceed to an investigation of the principles he advances.

As I understand the Senator, he holds, that the people inhabiting a Territory of the United States, have the right of self-government in all that concerns their domestic or internal affairs, as "an inherent right of sovereignty." "That Congress (to use his own words) can exercise legislation only so far as is necessary to protect the interests of the United States; and that the legislation for the people should be exercised by themselves, under the Constitution."

So far as the logic of my friend is concerned, the admission of his whole proposition would not produce the conclusion he designs. His proposition contains two admissions which press the whole fabric of his argument to the ground. He admits them to be *territories of the UNITED STATES*; and while transferring the power of legislation from Congress to the persons inhabiting them, admits they must legislate "*under the Constitution*."

Now, in admitting the territory to be "territory of the United States," that is to say, belonging to the people of the States which compose the Union, the further admission is involved of a right in the people of the several United States to enjoy its use. And in admitting that the people of the territory must legislate "under the Constitution," he places their authority under the same limitation

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that would restrain Congress from legislation tending to exclude the citizen of any State from an equal and just participation in the common property.

Surely, if the people of the United States own the territory, they have a right to enjoy their property without hinderance; and if the Constitution covers the territory, the local legislation must be subject to all its limitations.

So that, after all, the question raised by the Wilmot Proviso would return with the same force as ever—is there a power of legislation under the Constitution, no matter whether in Congress or elsewhere, by which the citizen of any State can be excluded from participating equally with all the rest in the common property of the Union?

But I presume the argument of my friend contemplated a power in the people inhabiting a Territory to legislate upon the subject of slavery, and upon all other subjects not relating to the disposal of the soil.

I take issue with him here, and utterly deny to the inhabitants of territory of the United States any original power of legislation or government whatever within the territory, except as a result of revolution.

In the first place, the Senator's position is opposed to the whole course of legislative practice upon the subject. From the ordinance of 1789 respecting the territory of the United States northwest of the Ohio, down to the bill relative to the Oregon Territory, reported a few days since, Congress has always exercised an exclusive control over the Territories. An original right in the inhabitants to govern themselves in any degree whatever has never been recognized, nor until recently ever asserted.

In the next place, his position is opposed to the whole current of direct judicial decision, and to the opinions of all the most eminent writers upon American political law.

"All admit the constitutionality of a Territorial Government."—*McCulloh vs. State of Maryland*, 4 Wh. R. 422.

Chief Justice Marshall says, speaking of the exclusive power of Congress to govern a Territory belonging to the United States:

"Whichever may be the source whence the power is derived, the possession of it is unquestioned."—1 *Peters' Rep.*, 543.

"Rules and regulations respecting the territory of the United States; they necessarily include complete jurisdiction."—*The Cherokee Nation vs. State of Georgia*, 5 *Peters' Rep.*, 44.

"The power of governing and of legislating for a Territory is the inevitable consequence of the right to acquire and to hold territory. Moreover, under this section [art. 4, sec. 3] Congress possessed and exercised the absolute and undisputed power of governing and legislating for the Territories erected in Louisiana after its purchase."—*Sergeant's Constitutional Law*, 389.

"As the General Government possesses the right to acquire territory either by treaty or conquest, it would seem to follow, as an inevitable consequence, that it possesses the power to govern what it has so acquired. The territory does not, when so acquired, become entitled to self-government, and it is not subject to the jurisdiction of any State. It must consequently be under the dominion and jurisdiction of the Union, or it would be without any government at all."—3 *Story's Comm.*, 193, 194.

To the same effect will be found Rawle on the Constitution, 237; 1 Kent's Commentaries, 383, 386; 3 Story's Commentaries on the Constitution, 198.

I will add an authority from Louisiana, which is the more deserving of attention, from the circumstance that it is to be presumed the bar and court were fully conversant with all the mooted questions of territorial right. The counsel in the case contested "the power of Congress to govern the Territories," and

contended, "that admitting they possess, they cannot delegate it." The court remarks upon this case as follows:

"If any doubt could be entertained, it would certainly vanish on consideration of the part of the Constitution of the United States to which the counsel for the State has drawn our attention: 'Congress have the power to dispose of and make all needful rules and regulations with regard to the territory or other property of the United States.' Now, a very needful regulation with regard to the land of the United States, considered as the subject of property, is to provide for its settlement. The individuals who are to settle on it must be designated, and when there, must have some kind of government given them. Otherwise, if any individual have a right to remove thither, and those thus assembled can establish a government of their own, independent of, and uncontrolled by, the authority of the United States, would not the acquiescence of the latter be an implied relinquishment of their title? Would not a State thus erected be at liberty to decline being incorporated into the Union?"

But let us now try his proposition by general principles.

Let me remind the Senator of one or two elemental principles, too well established to require demonstration; as,

First. That the legislative power is an attribute of sovereignty.

Secondly. That sovereignty is indivisible.

I concede that the several attributes or functions of sovereignty may be exerted through divers agencies; but sovereignty, or the exclusive and supreme ultimate authority in a State, from which all political action proceeds, must, from its very nature, be complete, and incapable of division; for, otherwise, there might be in the same State, and at the same time, two supreme powers; which is an absurdity.

Now, then, tried by these axioms in political science, how stands his theory of an "inherent" legislative right in the inhabitants of a Territory? If they possess it, it must be because they possess, in some degree, sovereignty. * If they possess any sovereignty, they possess it in its entirety. If they possess it in its entirety, they are an independent political State, and are of course independent of the United States, as of all the world; and the country covered by their jurisdiction cannot be territory of the United States; for sovereignty comprises an ultimate dominion over all the lands within the boundaries of the society.

This conclusion cannot be avoided, if the premise of the Senator's proposition be conceded, that the inhabitants of a Territory possess any "inherent right of sovereignty," or of "self-government," whatever. The possession of such a right, *in any degree*, precludes the existence of any superior or sovereign authority external of the community.

I will read a passage from the Senator's remarks, which appears to comprehend his entire view as to the rights of the inhabitants of a Territory of the United States:

"It is not denied that if the people of the Territory acquiesce in, or adopt the form of domestic government proposed for them by Congress, it becomes their own, having all the force of law until they 'alter or abolish it.' But this gives to Congress no constitutional right to enforce its legislation upon the people of the Territories against their will, and much less does it prohibit the people of the State in embryo from exercising their *own inherent right of sovereignty* in their domestic affairs."

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"The republican theory teaches that sovereignty resides with the people of a State, and not with its political organization; and the Declaration of Independence recognizes the right of the people to alter or abolish and re-construct their government. If *sovereignty* resides with the people

and not with the organization, it rests as well *with the people of a Territory*, in all that concerns their internal condition, as with the people of an organized State. And if it is the right of the people, by virtue of their *innate sovereignty*, "to alter or abolish," and re-construct their government, it is the right of the inhabitants of Territories, by virtue of the same inborn attribute, in all that appertains to their domestic concerns, to fashion one suited to their condition. And if, in this respect, a form of government is proposed to them by the Federal Government, and adopted or acquiesced in by them, they may afterwards alter or abolish it at pleasure. Although the government of a Territory has not the same sovereign power as the government of a State in its political relations, the people of a Territory have, in all that appertains to their internal condition, the same sovereign rights as the people of a State. While Congress may exercise its legislation over territory so far as is necessary to protect the interests of the United States, the legislation for the people should be exercised by them under the Constitution."

Now, it is evident that the Senator claims for the inhabitants of a Territory of the United States, as a distinct political society, a degree of inherent right of self-government and legislation, which may authorize them to accept or reject any rule prescribed by the United States, and in virtue of which, they may "alter or abolish," at their pleasure, the government enacted for them by Congress. I cannot presume the Senator alludes to the right of revolution; and I therefore infer he supposes that such rights can exist in the inhabitants of a Territory, consistently with its relations to the United States, as a part of its domain.

To negate this theory, I will read a single sentence from the late work of an eminent fellow-citizen of the Senator:

"As no State can properly be considered at once sovereign and subject, so no State can with strict propriety be considered as half or imperfectly supreme."—*Wheaton, on International Law*, p. 67.

No; nothing can be more clear than that the inhabitants of a Territory must be altogether subject to political control by a superior authority, or are altogether independent and sovereign in themselves. For this last alternative the Senator will not contend, and the first is therefore undeniable.

Something of what seems to me the confusion of the Senator's theory, grows, as I apprehend, out of a misapprehension of terms. He speaks of the inhabitants of territory of the United States as "a people." They are not a people, in a political sense; they compose no civil society. They are simply inhabitants of territory of the United States. Their condition in this regard is very well described in a passage which I will read:

"A society of men, by whatever ties and for whatever purposes they may be united to one another, is not complete in itself, if it has not within itself an independent power of government, but is, either in its legislative or its executive, subject to be controlled by any power from without. Such a society, therefore, though formed for civil purposes, is no civil society; it can, at best, be only a part of some other state, and is usually called a province to that state in particular from which it receives its laws, or by which its public force is put in motion and made to act."—*Rutherford's Institutes*, p. 68.

Another misapplication of terms, as I think, is in the use of the word "territory," as descriptive of a political organization. There is, in fact, no such political or civil organization. The term is only predicable of the lands covered by the jurisdiction of a State or nation. Territory is not used in the Constitution in any other sense, nor has the legislation of Congress ever employed it any otherwise than as descriptive of public domain.

If the persons inhabiting territory composed a civil society or state—if they

were paramount lords of the soil which they occupied—if they were independent of the control of any other authority—they would then possess the right of self-government and of legislation, because they would be sovereign. But, failing in all these essential elements of sovereignty, they fail altogether of any right of legislation.

I conclude that the inhabitants of a Territory of the United States have no original or inherent rights of government or legislation.

I come now to the question, Where is the right of government?

Whose is the territory? The answer to this will determine the point. The Constitution describes it as "*territory belonging to the United States.*" That is to say, territory belonging to the people of Maine, New York, Virginia, Georgia, Texas, and the other States, united under the Constitution. The Government of the United States, then, possesses the right of government as the common agent of the people of the United States, in whom inheres the sovereignty over it, and the complete and exclusive jurisdiction which this sovereignty, by the laws and usages of civil society, confers.

"Besides the eminent domain, the sovereignty gives a right of another nature over all public, common, and private property—that is, *the empire*, or the right of command in all places of the country belonging to the nation."—*Vattel*, 113.

"The domain of the nation extends to everything she possesses by a just title; it comprehends her ancient and just possessions, and all her acquisitions made by means which are just in themselves, or admitted as such among nations—concessions, purchases, conquests made in a regular war, &c. And by her possessions we ought not only to understand her territories, but all the rights she enjoys."—*Vattel*, 165.

The people of the United States, then, in their federative relation, as owners of the territory, hold the sovereignty, and with it the jurisdiction and complete right of legislation over the acquired territory. As coequal owners, the United States are coequal sovereigns over it, and they can use it, govern it, or dispose of it, through their common agent, without any other restraint than results from their federative character, and the terms of their union. In respect to other nations, they stand as the *exclusive* owners and sovereigns of the territory. In respect to each other, they stand *æquali jure*, as common owners and sovereigns, confederated in a united government.

It is immaterial from what source we derive the power of Congress to act as the common agent in the government of the territory of the United States. Whether this power be attributed to express grant under the clause of the fourth article which empowers Congress to "make all needful rules and regulations respecting the territory and other property belonging to the United States," or to an authority implied from the right to acquire territory by treaty or conquest, the great leading fact still remains, that the territory belongs to the people of the United States in their federative character, and that Congress acts, in the administration of its use, as the agent of the whole.

As owners, the people of the several States hold in equal proportional degree, with equal rights to its control and its use—its use, not only with reference to its profits, but its bearing upon their respective development, security, and general policy.

As agent, the United States Government must be regarded as a *trustee*, representing and exercising the authority of the whole, of one not more nor less than another; and bound, in the administration of the trust property, to apply it to the just and equal benefit of all, without discrimination or injury to any, and with a constant regard to the equality of the parties interested.

With these purposes, and under these limitations, Congress may govern the territories, and may employ such subordinate officers or agencies to administer its mandates as may seem to it best. It may vest the whole functions of government within the territories in one man or several; in a governor, or a governor and judges, or a governor, judges, and legislative assembly. It may establish a military rule, or may adopt an agency modelled into the fashion of a civil government. But whatever the form, these agencies, or subordinate governments, if you choose to call them so, can exercise no function that is not permitted to the Congress that created it, and must use its authority in subordination to the rights of the people of the United States, to whom the territories belong. Hence it is, that in all the acts prescribing rules for the government of territories, the agents are specially limited to powers "not inconsistent with the Constitution and laws of the United States."

"Provinces lose the nature of States, and become the appendages of other States, *having no kind of sovereign authority in themselves*. Whether, therefore, such a province is governed by a President or by an Assembly, is an indifferent point, which doth not in the least affect the proper sovereignty, inasmuch as both he and they *bear only a subordinate or delegated authority*."—*Puffendorf, B. 7, ch. 5, §16*.

Now, then, let me ask, by what authority, upon what pretences of right or justice, can Congress, either directly, or by permission to its subordinate agent in the territories, undertake to exclude from participation upon equal terms with all the rest, the people of any portion of the United States? Is not the territory the common property of all? and is not the Congress the common agent of all? Is the territory not as much the property of the people of Georgia as of Massachusetts, and the Congress as much the agent of Virginia as of New York? Why, then, should its advantages be partially distributed? A State is benefited by territorial possessions, in their use by her citizens, in the room they afford for the spread of her population, in the strength and security they contribute to her institutions, and the dignity they add to the Commonwealth. Yet, by the exclusion of the citizens of the States of the South, all these benefits are denied them. Nay, more; their security is actually endangered by the coercive establishment, in adjacent territory, of communities having institutions of a hostile and antagonist tendency, and their dignity is trampled upon by a discrimination which degrades them.

It will be observed, that I speak of the prohibition of slavery in the territories as an exclusion of the citizens of the slaveholding States. It needs no argument to show, that if the occupation of the territory is made to depend upon a condition which involves a total change in the habits and capital of a citizen, and a disruption in the form of his domestic community, the exclusion is, to all intents, complete, just as much so as if the citizens of a part of the States were forbidden to carry their wives, their children, and their wealth.

If Congress, in its discretion, opens territory to settlement, it is necessarily and of right open in equal degree to all the citizens of the several States. If the citizen of one State may go upon it and enjoy its use, so may, rightfully, the citizen of every other State of the Union; for otherwise the tenure of the States would be unequal. The right to go upon the territory involves the right to carry family and property; for these, if I may so speak, are a part of every man's political or civil entity. If his going upon the territory is legal, he does not lose his title to be protected in his natural rights of personal security, liberty, and property; and inasmuch as the Federal Government has become the agent or trustee of the people of his State in the government of the territory, it is

bound to afford him the needful protection. The forcible manumission of his slave would be a violation of his right of property, which, being contrary to the duty of Congress, could not be legally enacted, and being contrary to the right of the citizen, should be actively prevented.

It will be no answer to tell me, that what is property in one State or community is not necessarily so in another. That continues to be property, in territory of the United States, which is recognized as property in the State of the Union from which the citizen brings it. The trustee of the States is as much the agent of one State as another, and is bound to reverence and regard the institutions of each. The tenure by which property in slaves is held must be treated by the Federal Government as a rightful tenure, and be protected as property, so long as it is permitted by a State of the Union. This is not the Government of the people of New York any more than the people of Virginia. It is upon this principle that the Constitution authorizes the recaption of fugitives, and that the Federal Government has always claimed indemnity for injuries done by foreign nations to the slave property of citizens of the United States. The Federal agency was created as much by the people of the southern States, for the protection and benefit of themselves and their property, as it was by the people of the northern States. It is the Government of the whole, because it is the Government of each of the States, and not the Government of each, because it is the Government of the whole. Each adopted it by itself and for itself. Hence, in their federative character, slavery is a legal institution of the people of the United States; and it follows, as a consequence, that, upon federative territory, property in slaves is a legal tenure.

If the United States cannot rightfully so discriminate as to exclude a citizen of one of the States with his slaves from territory of the United States, nor destroy nor disturb his rightful property in them, neither can it *indirectly* do so, either by delegating such authority to an agent; for the act of the agent is that of the principal: nor by *acquiescence* in a usurped authority over the subject by its agent; for acquiescence, when there is power to prevent, is adoption. But, on the contrary, the United States Government is bound, by an active exertion of its authority, to protect and maintain the rights of all citizens legally inhabiting a territory; for the exercise of jurisdiction having been confided to the General Government, no other power can interfere for the purpose. There is no legitimate authority within the limits of the territory except as derived from the United States; and constituted, as Congress is, the trustee in possession, it must guaranty the just rights of all interested; and can only fulfill this obligation of guaranty by an active suppression of whatever may threaten injury to those rights. If, then, a citizen of a State has a right to go upon the territory with his slave, the United States is bound to guaranty to him the security of such his property against all interference while within the limits of the territory; and to prohibit by its mandates, and prevent by the public force, any such interference from any quarter.

But aside of all other arguments, the general principles of right are sufficient to the resolution of the question.

The States are united as equals, and the citizens of the United States are associated as equals. From this it follows, that both as States and as citizens, equality in the advantages as well as burdens of the common property is to be observed.

In all civil societies, "a pact (to use the words of Puffendorff, Book I, ch. '8, §9) is either expressly, or at least tacitly made between the society and the 'members, by which the society engageth to give him a just share and

'proportion of the goods which it enjoys as a common body; and the member
'promiseth that he will bear his proper and equal part of those burdens, which
'conduce to the preservation of the society, considered as such."

Vattel, (p. 110,) speaking of common property, describes it as being "common
'to all the citizens who take advantage of it, each according to his necessities,
'or according to the laws which regulate their use." And, after stating that
"the same rules hold good" as to corporate property with respect to the members
of the corporation, and to public property with respect to the whole nation,
says, (p. 114,) "all the members of a corporation have an equal right to the use
'of its common property. But, respecting the means of enjoying it, the body
'of the corporation may make such regulations as they think proper, provided
'that those regulations be not inconsistent with that *EQUALITY* which ought to
'be preserved in a communion of property. Thus, a corporation may determine
'the use of a common forest or pasture, either allowing it to all the members
'according to their wants, or allotting to each an equal share; but they have
'not a right to *exclude* any one of the number, or to *make a distinction to his*
'*disadvantage*, by assigning him a less share than that of the others."

Nothing could be more happily expressive of the rights of the people of the
United States in respect to the common property in territories. It was as equals
that the States confederated, and justice requires that their equality should be
regarded in the whole administration of the Federal authority. If the States
are to be regarded as equals, then what the same author (Vattel, p. 149) says
with respect to independent States, well applies to their relations: "None can
'naturally lay claim to any superior prerogative, for whatever privileges any
'one of them derives from freedom and sovereignty, the others equally derive
'the same from the same source."

If we may borrow an illustration from the ordinary case of joint or common
property among individuals, it will be admitted by all, that while all the joint
owners are bound to equal contribution, so all are alike entitled to equal advan-
tages in its use.

I need not enlarge upon the importance of justice in the conduct of govern-
ments. It is the basis of all society, and without it, order, and all the other
virtues of social and political life, would soon depart. Its observance is more
important even with nations than individuals, and above all should it be an
attribute of associate and confederate nations, or united States. No voluntary
association can long endure which is not ruled by justice.

Before proceeding to another point in the argument, I will notice, in passing,
an objection that may be hastily made by some, to the absolute dependence I
have shown to exist on the part of the inhabitants of a territory towards its sover-
eign. It may be supposed that I regard inhabitants of our Territories to be merely
vassals or subjects. By no means. I consider that the citizen of a State of
the Union who goes upon territory belonging to the United States, goes there
as a citizen of the State of which he is a member, and does not lose that relation
to his State while resident in the territory, nor until he becomes a member of a
new State, by the organization of the inhabitants of the territory into a sovereign
community, under the sanction of the United States. It is in that character
that he continues to be entitled to the guardianship of his State, and the pro-
tection of the United States, in all his just rights, including those of property.
As regards inhabitants whose allegiance is acquired with the territory, it may
be more difficult to define their precise relation. Let it suffice, that I, for one,
am averse to any acquisitions which bring with them any large body of inhabit-
ants not prepared for early organization into sovereign communities.

Mr. DICKINSON. If the Senator please, I desire to ascertain his views more fully, by propounding one or two questions.

Mr. YULEE. Certainly.

Mr. DICKINSON. First. Suppose Canada should be annexed to the United States without any change in her laws; would the institution of slavery exist there without legislation?

Mr. YULEE. If Canada was acquired as territory, any citizen of a State of this Union could go upon it with his family and property, slaves as well as other, and would be entitled to reside there, securely, under the guarantees of the Constitution, while it continued to be a part of the territory belonging to the United States.

Mr. DICKINSON. One further question. Can Congress, or any other legislative body, exercise any authority or control over the subject, so long as the territory annexed remains a Territory?

Mr. YULEE. Neither Congress nor any other legislative body would have any authority to pass a law by which the property of a citizen, going rightfully upon such territory, could be divested—no matter whether such property consisted in slaves or anything else. But Congress would be bound, by its duty as the common agent of the people of the States of the Union, to pass all laws necessary to protect him in the undisturbed tenure of such his property.

I propose now to consider whether the circumstance that there are inhabitants living upon territory at the date of its acquisition, can alter the results of my preceding argument as to the rights of the people of the United States, with respect to its enjoyment.

Is the territory acquired by conquest or purchase any the less a common property of the United States, because there are inhabitants of a foreign origin upon it? Certainly not, as all must concede. Then surely it must be subject to all the rules which apply to a common property as between the owners.

Do the inhabitants of foreign origin living upon such territory possess inherently any larger rights than the free citizens of the United States who go upon it? The answer must be, no; for if the right of the sovereign to govern in his territory is absolute, it is absolute as respects all persons who live upon it, without regard to origin. There can be no power or jurisdiction in the territory of a nation independent of its sovereignty.

But let us consider the subject first with reference to the laws and custom of nations, and next with reference to the Constitution of the United States Government.

1. Upon the conquest or purchase of territory, the sovereignty and jurisdiction of the nation losing the territory ceases, and that of the acquiring power simultaneously succeeds. Civil laws, all rules for the government or conduct of civil societies, have force, as laws, only because they express the sovereign and supreme will of the State. When the sovereignty ceases, its will being no longer supreme, the laws which emanated from it necessarily cease of their force. Upon the withdrawal, therefore, of the authority of the former sovereign, the preëxisting institutions and laws instantly expire; for the fountain which gave them vigor and vitality is cut off.

To render the proposition more plain, I will present it in another form. The laws of a nation are confined to the limits of its territorial jurisdiction. When it parts with the jurisdiction of any portion of its domain, the whole body of its laws necessarily retire to the limits of the territory to which its jurisdiction becomes contracted by the cession.

By the political law of nations, then, there would be no laws remaining in

force in the territory thus dissevered, and it would remain without government until a code was enacted by the new sovereign. To suppose otherwise, would be to suppose that a nation could extend its laws beyond the limits of its own jurisdiction, and into the jurisdiction of another nation; which would be an absurdity in terms as in principle.

But inasmuch as a period might intervene between the withdrawal of one code of laws and the prescription of another by the new sovereign, the custom has grown up among nations, from a regard for the interests of humanity, and to prevent a total dissolution of social order, of leaving in force, in such cases, those necessary regulations which protect the natural rights of the inhabitants, and preserve order in their social relations. But these regulations rest for their force not upon the enactment of the former sovereign, but upon the assent, which custom presumes, of the new sovereign. The municipal regulations thus allowed to prevail temporarily, are, in the very nature of the custom, limited to the precise necessities of the case, and operate only to govern the relations of the persons thus transferred, between each other, until a new code is provided. They cannot prevail as a law of government for the territory thus acquired; nor can any municipal regulations remain in force which are inconsistent with the prerogative and rights of the new sovereign, or which abridge or embarrass his title to the use of his new acquisition. Of this nature would be any regulation which confiscated or extinguished the property of a citizen of the new sovereignty who came upon the territory to enjoy, of right, its use. The rights of property of the inhabitants remain sacred; but no law of the old government can rightfully remain in force which disturbs the tenure of property in a member of the new sovereignty; for this would be inconsistent with the sovereign right of use.

It is with these limitations we are to receive the doctrine that the municipal laws of a ceded territory remain in force. Any other view of the subject would, as I apprehend, be at war with the whole theory of sovereignty and jurisdiction.

2. It is under and by authority of the Constitution that Congress holds the jurisdiction and exercises the government of territories belonging to the United States. This jurisdiction and authority are necessarily exclusive, as I have heretofore shown.

Now then, the ancient laws, municipal or other, can only remain in force, in newly-acquired territory, by virtue of an expressed or presumed assent of Congress; but no such assent can be presumed in regard to laws which are incompatible with the rights of the people of the States of the Union under the Constitution; for Congress is the creature of the people of the several States, and the Constitution is the rule of action they have prescribed to it.

We are now prepared for the more distinct inquiry whether, because slavery was abolished by an ancient edict among the inhabitants of territory newly acquired by the United States, that edict would continue its operation so as to affect the tenure of one of the people of the United States carrying his slave upon it.

I readily concede, that although by the change of jurisdiction the force of the ancient edict would cease, slaves once emancipated by its operation would not be remitted to slavery; for this would be only extinguishing one law of the lapsed sovereignty to revive an older one, which had recognized the slave as property. The inhabitants, whether black or white, freemen or peones, would preserve their respective relations and social condition, as existing at the moment of transfer, so far as might be compatible with the general fundamental policy and laws of the United States.

On the other hand, it must be conceded by every one, that no municipal law could remain in force which would diminish the sovereign authority, or embarrass the use of the territory to its new owner. This is too clear to admit of denial.

Now, let us suppose, first, that the States of this Union were all separate, and that Texas, as an independent community, acquired the territory: of course it would become a part of the domain of Texas. Could any law remain in force in the new territory, after it was covered by the jurisdiction of Texas, which was contrary to her established laws of property? Could the Texan community, the owners, as they would be, of the territory, be excluded from its use by virtue of any previous ordinance of its ancient sovereign abolishing slavery? Every one will respond to this, assuredly not. Now, add to the people of Texas those of the other fourteen slaveholding States as united purchasers with her: would not the result be the same? Add, then, the people of the fifteen northern States: would their accession as joint owners alter the just rights of the others? If so, the Government of the United States may be considered as a Government of and for the North, and not of and for the whole people of the Union.

Again: The Catholic religion is established in Mexico, and Protestantism is excluded by law: would that law or regulation remain in force in territory we may at any time acquire from Mexico? Certainly not; for Congress being restrained by the Constitution from making any laws inconsistent with "the free exercise" of religion, as soon as jurisdiction of the United States attached, all laws creating discriminations between citizens of different religions would at once expire. Why? Because such laws would be contrary to a fundamental principle of the federative compact. And clearly, for the same reason, all laws which would create inequality or discrimination between the citizens of the United States in any other respect, would expire; for equality of rights in the citizens of the Union is, in like manner, a fundamental principle of the federative compact. But if the doctrine that all municipal laws remained in force until repealed was correct, then the Mexican restriction upon the freedom of religion would continue permanently in force; for Congress could not repeal it, being prohibited by the Constitution from "making any law respecting an establishment of religion." And on the supposition that the Senator was correct in his opinion, that the inhabitants of the territory possessed the right of legislation, it would be continued in force so long as the population acquired with the territory maintained the ascendancy. Nay, the restriction might be continued even after the establishment of a State Government; for the State would have the right to create a religious establishment: and, in the event of our incorporating any densely-populated part of Mexico, such would assuredly be the consequence.

It will be observed that I have treated laws recognizing or abolishing property in slaves as municipal, simply. It may well be doubted whether, under any system of Government, laws of this description, from their deep bearing upon the social and civil relations, are not entitled to be regarded as fundamental in their nature, and appropriately pertaining to the class of political laws.

But, with reference to our system of Government, if I am not mistaken, there can be no doubt. I have endeavored to show, in a preceding part of my argument, that the territory of the United States being federative property, must be held in subserviency to the equal political right of all the parts of the Union to benefit from it; and that property in slaves, being recognized in a large portion of the Union, is therefore to be regarded a part of the political system of the United States in their federative relation. If I am correct in this, the equal right to the use

of territory, and the right to hold slave property in federative territory, are political rights under the federative compact, and are thus a part of the fundamental political law under the Constitution. It would follow, then, that all ancient laws, in territories acquired by the United States, which might disturb a citizen of the Government in his right to an equal use of it, and to the secure tenure of his slave property while upon it, would be extinguished, because in conflict with the political system of the new sovereign; for it is universally admitted, that the laws of a political bearing, or as they are denominated, political laws, would cease of their force upon a change of sovereignty. Congress could pass no law which conflicted with the political system of the Union—a *fortiori*, Mexico can transmit no laws for our territories which are of that nature.

The conclusion I reach seems to me sustained by sufficient reasons. No law or regulation can remain in force or be enacted in any territory belonging to the United States which is incompatible with the rights of the people of the United States under the Constitution, no matter whether such territory be acquired with or without inhabitants.

The Senator took occasion yesterday to call my attention to the resolutions of a Democratic Convention of Georgia, and to the opinions of a distinguished member of the other House from Virginia, and of a writer in the Southern Review, with a view of showing that the doctrine of a right in the inhabitants of territory of the United States to act upon the subject of slavery was recognized in the South.

The Georgia resolutions, to which he referred, will not sustain the object with which he referred to them; for I find that they expressly declare, "It is the constitutional right of every citizen to remove and settle with his property in any of the territories of the United States."

But I will beg leave to present, as the best evidence of the position of the South upon the subject, the resolutions of several of the State Legislatures, passed in every instance by unanimous votes.

For this purpose, I will read one of the resolutions of the Virginia Legislature, which is in the following language:

"2. *Resolved, unanimously*, That, under no circumstances will this body recognize as binding any enactment by the Federal Government which has for its object the prohibition of slavery in any territory to be acquired either by conquest or treaty; holding it to be the natural and indefeasible right of each and every citizen of every State of this Confederacy to reside with his property, of whatever description, in any territory which may be acquired by the arms of the United States, or yielded by treaty with any foreign power."

A resolution of the Georgia Legislature, as follows:

"2. *Be it further resolved by the authority aforesaid*, That any territory acquired or to be acquired by the arms of the United States, or by treaty with a foreign power, becomes the common property of the several States composing this Confederacy; and whilst it so continues, it is the right of each citizen, of each and every State, to reside with his property of every description within such territory."

A resolution of the Alabama Legislature:

"2. *Be it further resolved*, That under no circumstances will this body recognize as being any enactment of the Federal Government, which has for its object the prohibition of slavery in any territory to be acquired either by conquest or treaty, holding it to be the natural and indefeasible right of each citizen of each and every State of the Confederacy to reside with his property of every description, in any territory which may be acquired by the arms of the United States, or yielded by treaty with any foreign power."

These resolutions present, as I hold, the true position of the great body of the South; and, upon this position, I stand with them.

Mr. FOOTE here requested to be allowed to read an amendment, which he stated it was the purpose of Mr. DICKINSON to accept as an addition to his second resolution, and which he stated was prepared and agreed upon some time since. The designed amendment was in the following words:

"In subordination to the Federal Constitution, and reserved rights of the States and people."

Mr. YULEE proceeded. I am obliged to the Senator for the information. He was so good as to show me the amendment yesterday. But, while I recognize in it a good spirit, and a disposition to make the Constitution the rule to which they will conform, I must frankly say, it does not meet the issue. The effect of the amendment would be only to declare that the local legislature must legislate under the Constitution, leaving wholly undetermined the material point, what are the rights of the people of the Southern States under the Constitution, in respect to the use of the territory?

Before I take my seat, I desire to say, that if, in discussing this subject, I have directed my remarks principally to a reply to the argument of the Senator from New York, [Mr. DICKINSON,] it has not been because of any desire to embark in a controversial debate with him. But differing from the views of which he stood forth as the exponent upon this floor, I felt it my duty to present counter-resolutions to those he had proposed; and, in supporting my position, I have been obliged to review his doctrines with such strictness of scrutiny, as the occasion seemed to me to require. I am sure that, in the course of my remarks, I have designed to say nothing inconsistent with the friendly feelings I take pleasure in cultivating towards him, nor with the thanks I owe him and his friends, for throwing the weight of their great influence against the mischievous spirit of Abolitionism and Wilmotism.

Sir, it has seemed to me a duty of patriotism to offer my humble views, unimportant as they may be, to the consideration of the Senate. The question has seemed to me vital to the Union. It strikes at the *equality of the States*; and when that equality is subverted, those who are the subject of the degradation; and yet abide in the Union, must be content to abide in it as serfs, not as freemen. An eminent political philosopher, whose writings I have before had occasion to quote in the course of this argument, says truly, that the weaker States in a Confederacy are reduced to the condition of dependant provinces, whenever "they allow any lasting PREFERENCE OF PREROGATIVE to those that are stronger, and engage themselves in UNEQUAL ALLIANCES."

Senators, I shall be saying only what our proud sister States of the North will heartily respond to, when I declare that no American State, which holds in proper esteem her birthright of Liberty, can endure any Union which is not a CONFEDERACY OF EQUALS.

